

This letter discusses personal property purchased through certain fundraising events for the benefit of certain schools. See 86 Ill. Adm. Code 130.2009. (This is a GIL).

June 22, 2004

Dear Xxxxx:

This letter is in response to your email dated May 11, 2004, referred to our office in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am in my 32nd year of education in Illinois and THIS YEAR I'm told that our PTO MUST charge 6.5% sales tax to our students who purchase books at the Book Fair at school.

Can you please tell me WHY this is so? I need the name of the law that requires this. AND I'm told that if the items to be sold were donated to the school, then the sales tax would not have to be assessed. Is this true?

Our school is nearly 75% free/reduced lunch and the small amount of money that our students bring for the annual 2-for-1 book fair is intended to purchase reading materials for Summer—NOT filling the State coffers with their pennies.

Please explain to me WHY our PTO must collect sales tax on purchases made by our students—especially when all profits from our book fairs go to the School's Media Center/Library to increase our collection.

Thank you in advance for your prompt response to this inquiry.

For general information purposes, organizations that qualify as exclusively religious, charitable, or educational organizations, can apply to the Illinois Department of Revenue to obtain a tax

exemption identification number. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a).

Organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. Pursuant to 86 Ill. Adm. Code 130.2005(4), organizations may engage in occasional dinner and similar activity fundraisers on no more than two occasions per year. The Department would view the activities described in your letter as a similar activity allowed as exempt under the Act providing it would not occur more than two times per year.

The "sales to members" exemption found at 86 Ill. Adm. Code 130.2005(a)(2) is limited to sales by an exclusively religious, educational or charitable organization that are made primarily for the purposes of the selling organization to its members, or students in the case of a school. Please note, the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells literature or other items of tangible personal property that would place them in competition with bookstores or other retailers, the sales generally would not be primarily for the purpose of the selling organization.

Section 130.2005(a) of the Code specifically provides that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such government body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function."

The reason for this rule is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give governmental units a competitive advantage over Illinois retailers. An example of sales that may be made by a governmental body to the public that involves the performance of a governmental function is the sale of motor vehicle license plates by the State of Illinois.

Where a governmental unit makes sales that are not in the direct performance of its governmental function, the sales are taxable. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of T-shirts, caps and mugs by State agencies, sales of books by libraries, and sales of books and supplies by school districts to students. In regards to the latter situation, the Illinois Supreme Court provided guidance in this area in the case of *Follett's Book and Supply Store v. Isaacs*, 27 Ill.2d 600, 1963. In *Follett's* the Court analyzed a situation where schools were selling books only to their students. The schools were not charging sales tax pursuant to a Department of Revenue regulation that exempted sales of schoolbooks by schools to its students. Retail bookstores that competed with the school bookstores brought the lawsuit and claimed that the schools were operated for educational purposes and that their book sales were not essential to such purposes or operated in furtherance of such purposes. The Illinois Supreme Court concluded that the sales were subject to sales tax and the Court voided the particular Department regulation that had exempted such sales from sales tax liability.

If the items to be sold are donated to the school then pursuant to 86 Ill. Adm. Code 130.2009(c) the fundraising group, sponsored by an entity recognized by the school district, may engage in tax-free selling under the Act. For example, the types of sales include the following:

- 1) Bake sales or bazaars selling items that are prepared by or donated to the fundraising group; or
- 2) Sales of donated clothes or other items by a fundraising group, provided that the funds go solely to benefit the school; or
- 3) Spaghetti dinner events selling food that is prepared by a parent-teacher association.

Please note the following types of selling *would not* be exempt:

- 1) A parent-teacher association's sale of wrapping paper, holiday goods, and ready-to-sell food products (such as candy bars, nuts, or frozen pizzas) that are purchased from a supplier for purposes of resale, where the supplier makes a profit from the sale to the parent-teacher association. Such items fall outside the restriction that the items be prepared by or donated to the parent-teacher association.
- 2) Sales of class rings by a parent-teacher association. These items are not prepared by or donated to the parent-teacher association. Such rings have been purchased from a supplier for resale, and the supplier has made a profit from the sale to the parent-teacher association.
- 3) If a parent-teacher association contracts with a caterer for a fundraising dinner, sales of the dinner cannot be made tax-free. Again, the parent-teacher association has purchased ready-made items for a caterer for purposes of resale, and the caterer has profited from the sale.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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